IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8511 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

@

PRAGNABEN B DESAI

Versus

SECRETARY SCHOOL FOR DEAF AND MUTES

Appearance:

1. Special Civil Application No. 8511 of 1991

MR AD OZA for Petitioner No. 1

MR RN SHAH for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 12/08/2002

ORAL JUDGEMENT

By filing this petition under Article 227 of the Constitution, the petitioner has prayed to set aside and quash order dated August 14, 1989, passed by the Labour

Court, Ahmedabad, in Recovery Application No. 1535/1978, by which the prayer made by the petitioner to direct the respondent to pay difference in pay, is rejected.

2. The petitioner is employed as a Primary Teacher in the respondent-School. According to the petitioner, she is entitled to pay-scale of Rs.270 and difference in salary on that basis. As the same was not granted to her, she filed Recovery Application No. 1535/1978 before the Labour Court, Ahmedabad under section 33(c-2) of the Industrial Disputes Act, 1947, seeking direction against the respondent to pay the arrears as per the pay-scale applicable to her. Two preliminary objections were raised by the respondent before the Labour Court viz. (i) the petitioner is not a workman, nor the respondent-Institution is an industry, and (ii) the Labour Court had no jurisdiction to entertain the recovery application in view of the provisions of The Bombay Primary Education (Gujarat Amendment) Act, 1986. After hearing the parties, the Labour Court has held that the petitioner is not a workman and dismissed the recovery application by order dated August 14, 1989, giving rise to the present petition.

3. Heard the learned counsel for the parties. It is not in dispute that The Bombay Primary Education (Gujarat Amendment) Act, 1986, has come into force with effect from May 22, 1986, and a separate forum viz. "Tribunal" has been constituted under the provisions of The Bombay Primary Education Act, for resolving the disputes connected with the conditions of service of a teacher and the management. Section 40-G of the Amended Act provides that all the suits and proceedings between the manager of a recognised private primary school and a teacher in service, of such school relating to disputes connected with the conditions of service of such teacher, which are pending in any civil Court on the date of the commencement of the Bombay Primary Education (Gujarat Amendment) Ordinance, 1986, shall be transferred to and continued before the Tribunal.

4. In view of the mandatory provisions of Section 40G of the Act, the Labour Court, which is a Civil Court, could not have dismissed the application filed by the petitioner on the ground that the petitioner was not a workman within the meaning of the provisions of The Industrial Disputes Act, 1947, and should have transferred the matter to the Tribunal for its decision. There is no manner of doubt that the order impugned in the petition is without jurisdiction and liable to be set aside.

For the foregoing reasons, the petition succeeds. The order dated August 14, 1989, passed by the Labour Court, Ahmedabad, in Recovery Application No. 1535/1978, is hereby set aside and quashed. Recovery Application No. 1535/1978, which was filed by the petitioner before the Labour Court, Ahmedabad, stands transferred to the Tribunal constituted under the provisions of The Bombay Primary Education Act, and the Tribunal is directed to decide the same in accordance with law. The Labour Court, Ahmedabad, is directed to transmit the necessary record and proceedings of the case to the Tribunal within one month from the date of receipt of the writ. The case being old one, the Tribunal is directed to decide the application as early as possible and without any avoidable delay. Rule is made absolute accordingly, with no orders as to cost.

(J.M.Panchal,J.)

(patel)